REMARKS

Claims 22-34 are pending. This includes independent claims 22 and 28. Claims 28-30 are objected to for being dependent upon a rejected based claim but are otherwise allowable. In response, claim 28 has been rewritten in independent form including the limitations of claims 22 and 27. Claims 29 and 30 have been amended to depend from claim 28. Accordingly, claims 28-30 should be in condition for allowance.

Claims 22-27 and 31-34 stand rejected under 35 U.S.C. § 102(e) as anticipated by Reichel '786. However, Reichel '786 does not possess all the limitations of Applicant's claims.

Claim 22 claims a track system for a railborne vehicle. The system comprises a carrier defining a track plate along which the vehicle will travel and connecting elements extending transversely from the underside of the track plate. The carrier is supported on a bed. A compensation sleeper is formed independent from the carrier. The compensation sleeper is positioned on the top surface of the bed and extends under each of the connecting elements. Thus, the compensation sleeper constitutes an intermediate member between the bed and the connecting elements. The compensation sleeper is connected to the bed and the connecting elements are connected to the compensation sleeper. An adjustment mechanism is present to adjust the position of the carrier by adjusting the relative positions between the compensation sleeper and the bed or between the connecting elements and the compensation sleeper. This allows for

fine adjustments when installing the track system to improve construction and performance.

The Office Action contends that Reichel '786 discloses all the limitations of claim 22 and states that Applicant's position is that Reichel '786 does not show a compensation sleeper which is an independent casting of the connecting elements. (10/27/08 Office Action, p. 3.). Respectfully, however, Applicant's position is that Reichel '786 does not disclose a compensation sleeper that is **under *(not between)*** the connecting elements. Applicant further contends that Reichel '786 does not disclose an adjustment mechanism capable of adjusting the relative positions between the connecting elements and compensation sleeper or the compensation sleeper and bed.

Reichel '786, FIG. 8 shows:

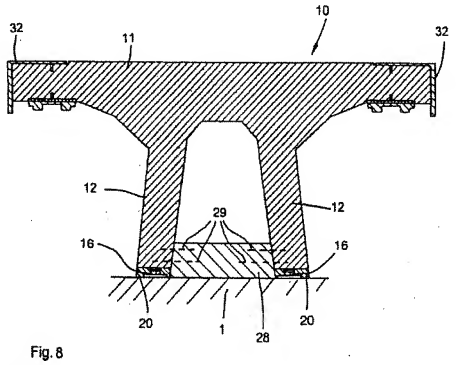


Fig. 8

Reichel '786 explains FIG. 8:

> In FIG. 8 is presented a support 10 on a base plate 1. The spindles 16 are fastened within the webs 12. Between the webs 12 and the base plate 1 the corresponding intervening space is filled with the grout 20. **The intervening space between the webs 12 is sealed with concrete. The thereby created connection 28 creates**, especially, with an corresponding connection with the base plate 1, **a guidance for the support 10 in its transverse direction.** If a relative movement between the

> connection 28 and the support 10 is not desired, then the possibility exists, as is here shown, of providing reinforcements 29, which ties the support 10 to the connection 28. The connection 28 and the grout 20 can be made from the same material, and if desired, made simultaneously.

(Reichel '786, ¶ 0059.)

Applicant claims a compensation sleeper positioned on the top surface of the bed that **extends under each of the connecting elements**. Essentially, the compensation sleeper is an intermediate member between the connecting elements and the bed. Further, **an adjustment mechanism is present to adjust the position of the carrier by adjusting the relative positions between the compensation sleeper and the bed or between the connecting elements and the compensation sleeper**.

First, Reichel '786 fails to disclose that the connection 28 is underneath the webs 12. As FIG. 8 shows, connection 28 is located **between** the webs not underneath them. Further, as shown by FIG. 8, there is no adjustment mechanism for adjusting the positions between the compensation sleeper and the bed or the connecting elements. Connection 28 is simply concrete that fills the space between webs 12. It is not a compensation sleeper that extends under the connecting elements. There is no adjustment mechanism to adjust the relative positions of the compensation sleeper and bed or the relative positions of the connecting elements and the compensation sleeper. Connection 28 once poured remains in place between the webs and no means is provided for adjusting the position of connection 28 with respect to the webs or the base plate. Accordingly, Reichel '786 does not anticipate Applicant's claims and thus

cannot form the basis of a rejection pursuant to §102. Applicant respectfully requests that Examiner reconsider his position and withdraw the rejection.

Applicant also respectfully submits that for at least the reasons indicated above relating to corresponding independent claims, the pending dependent claims patentably define over the references cited. However, Applicant also notes that the patentability of the dependent claims certainly does not hinge on the patentability of independent claims. In particular, it is believed that some or all of these claims may possess features that are independently patentable, regardless of the patentability of the independent claims. For instance, claims 24 and 25 require, *inter alia*, a fixed bearing arrangement between at least one of the connecting elements and the compensation sleeper. However, Reichel '786 simply discloses pouring concrete between the webs 12 to form a connection 28 between the webs. Accordingly, no bearing element is present. Thus, Reichel '786 does not anticipate claims 24 and 25 and the claims should be allowed.

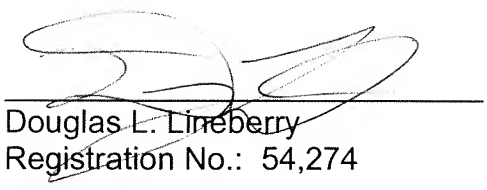
Applicant respectfully submits that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner McCarry is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Response.

Please charge any additional fees required by this Response to Deposit Account No. 04-1403.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

DORITY & MANNING, P.A.



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